

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF ARKANSAS—HOT SPRINGS DIVISION

PAUL F. MILLER,

Plaintiff,

v.

AT&T dba Southwestern Bell Telephone
Company aka AT&T Arkansas; AT&T dba
DirecTV LLC.; JAMS; RANDALL S,

Defendants.

No. 6:18-cv-06008-SOH

Hon. Susan O. Hickey

**OBJECTION OF DEFENDANTS SOUTHWESTERN BELL TELEPHONE COMPANY
D/B/A AT&T ARKANSAS, DIRECTV, LLC, AND RANDALL STEPHENSON TO
PLAINTIFF'S "DESIGNATION OF PARTIAL RECORD" AND "ORDER OF
TRANSCRIPT AS AN EXHIBIT ON APPEAL"**

Pursuant to Federal Rule of Appellate Procedure 10, Defendants hereby object to Plaintiff Paul F. Miller's "Designation of a Partial Record" (Dkt. No. 42) and "Order for Transcript as an Exhibit on Appeal" (Dkt. No. 46), which he filed in connection with his notice of appeal (Dkt. No. 40).

To begin with, Mr. Miller cannot purport to limit the record on appeal by filing a "Designation of a Partial Record." Rule 10(a) states that "the original papers and exhibits filed in the district court," the "transcript of proceedings, if any," and "a certified copy of the docket entries prepared by the district clerk" shall "constitute the record on appeal[.]" Fed. R. App. P. 10(a)(1)-(3). Accordingly, all "original papers and exhibits" remain part of the "record on appeal"—not just the handful of documents that Mr. Miller designates. *See* Dkt. 42, at 1.

Nor can Mr. Miller expand the record on appeal by purporting to designate documents not submitted to the district court or order transcripts of proceedings in other forums. To the contrary, only the "papers and exhibits *filed in the district court*" and the "transcript of proceedings" in the district court are part of the "record on appeal." Fed. R. App. P. 10(a)(1)-(2) (emphasis added). Yet Mr. Miller's "Designation of a Partial Record" consists of a list of documents without identifying them by docket number or confirming that they were filed in the district court. *See* Dkt. No. 42, at 1. And if any of the documents attached to his "Designation of a Partial Record" had been submitted to the district court, none bears a file-stamp by the district clerk or CM/ECF system. *See* Dkt. Nos. 42-1 through 42-9.

Similarly, Mr. Miller's "Order for Transcript as an Exhibit on Appeal" improperly states that "a transcript of the August 18, 2017 hearing *in arbitration*"—not the district court—"was ordered" from Gary Pritsch of Bushman Court Reporting. Dkt. No. 46, at 1 (emphasis added). Mr. Miller then attached what appears to be a letter that he sent on July 26, 2018 to Mr. Pritsch,

asking him to “transcribe[.]” a “recorded hearing from [Mr. Miller’s] arbitration” that Mr. Miller wants “for an appeal in St. Louis (8th Cir).” *Id.* at 2. Mr. Miller cannot purport to expand the record on appeal by adducing new evidence—a transcript of a purported recording of an arbitration hearing—that was never submitted to the district court. *See, e.g., Bath Junkie Branson, L.L.C. v. Bath Junkie, Inc.*, 528 F.3d 556, 559-60 (8th Cir. 2008) (holding that “[b]ecause” particular documents “were presented for the first time at the appellate stage, they are not part of the record for our review”).

WHEREFORE, Defendants object to Mr. Miller’s Designation of Partial Record (Dkt. No. 42) and Order of Transcript as an Exhibit on Appeal (Dkt. No. 46), and request such other relief to which they are entitled.

DATED: July 31, 2018

Respectfully Submitted,

/s/ John M. Scott

John M. Scott (Ark. Bar No. 97202)

Amber J. Prince (Ark. Bar No. 2007247)

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 31st day of July, 2018, a copy of the foregoing Objection To Plaintiff's "Designation Of Partial Record" And "Order Of Transcript As An Exhibit On Appeal" was electronically filed with the Court using the CM/ECF system and was served by electronic and first class mail on:

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s/ John M. Scott
John M. Scott (Ark. Bar No. 97202)